Supreme Court, U.S.
FILED

(1) 96 155 JUL 29 1996

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

JAMES MICHAEL HARRIS
AND
JUDITH A. HARRIS,

Petitioners,

vs.

CITY OF PORT HURON,

Respondent.

Petition For Writ Of Certiorari
To The Court Of Appeals
Of The State Of Michigan

PETITION FOR WRIT OF CERTIORARI

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46pp

QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS FOR THE STATE OF MICHIGAN MISAPPLIED THE PRINCIPLES SET FORTH IN *DOLAN V. CITY OF TIGARD*, 114 SUPREME COURT 2309 (1994) AND *NOLAN V. CALIFORNIA COASTAL COMMISSION*, 483 U.S. 825 (1987); BY NOT ALLOWING THE PROPERTY OWNER A SEPARATE HEARING RELATIVE TO THE "PUBLIC USE QUESTION" AND BY FAILING TO SHIFT THE BURDEN OF PROOF IN THAT HEARING TO THE TAKING AGENCY WHEN THE LANDOWNER'S PROPERTY WAS TO BE GIVEN TO A SPECIFIED IDENTIFIABLE PRIVATE INTEREST.

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CITATIONS TO OPINIONS BELOW

The order of the Supreme Court of the State of Michigan denying Petitioner's request for the Michigan Supreme Court to reconsider its Order entered January 29, 1996, denying Application for Leave to Appeal was entered on April 29, 1996 and is reported at ___ Michigan ___ 1996. The unpublished opinion of the Court of Appeals of the State of Michigan was entered on April 28, 1995. The opinion of the Honorable James T. Corden was entered on July 6, 1990. Copies of this order and opinions are included in the Appendix to this Petition.

STATEMENT OF JURISDICTIONAL GROUNDS

The order of the Supreme Court of the State of Michigan denying Petitioner's request for Motion for Reconsideration of the Michigan Supreme Court's Order of January 29, 1996 denying Petitioner's Application for Leave to Appeal was dated April 29, 1996. The jurisdiction of this Court is invoked under 28 USC 1257(a). The decision of the Court of Appeals of the State of Michigan was based upon the decision of *Poletown Neighborhood Council v. City of Detroit*, 410 Mich 616 (1981).

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved in this Petition are the Fifth Amendment of the United States Constitution, the Fourteenth Amendment of the United States Constitution, and Article X, Section II of the Constitution

of 1963 of the State of Michigan. Those constitutional provisions read as follows:

Constitution of the United States
Amendment V
Capital Crimes; Double Jeopardy;
Self-Incrimination; Due Process;
Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States
Amendment XIV
Citizenship Rights Not to be Abridged by States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Michigan of 1963
Article X, Section II
Eminent Domain; Compensation

Section 2. Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record.

STATEMENT OF THE CASE

As stated by Judge Corden in his opinion of July 6, 1990, "These proceedings have 'history'." Petitioners Harris and Docherty (who are not part of this Petition) owned the two last private residences on the Black River in the City of Port Huron between the 7th and 10th Street Bridges. The City of Port Huron had many plans for the redevelopment of the area, which over a period of the early 1970's arguably made the area worse rather than better as people abandoned this area. One of the city's plans was to increase the right-of-way on Water Street, which included buying up homes adjacent to Water Street, letting them sit in an abandoned or unsightly condition and then not building the road for which they had acquired the property. In any event, the City attempted in 1987 to use the Blighted Area Rehabilitation statute in the State of Michigan, MCL 125.71 et seq., to condemn the Petitioners' property. Petitioners requested a Necessity Hearing and at the Necessity Hearing Petitioners' Motion for Summary Disposition was granted because in fact the Petitioners' property was not included in the boundaries of the blighted areas district as

required by Michigan Statute. As the property was going from the city to an identifiable private interest, i.e., Southeastern Development Company, hereinafter referred to as SEDCO, the Condemnation Proceeding was dismissed.

Thereafter the City amended the boundaries to include the Petitioners' property and began the instant Condemnation proceedings. Prior to the Necessity Hearing referred to in the Michigan Court of Appeals opinion dated April 28, 1995, Petitioners, based upon the Fifth Amendment of the United States Constitution "Taking Clause" as applied to the states through the Fourteenth Amendment of the United States Constitution and on Article X Section II of the Michigan Constitution, moved and challenged the "Public Use" of this project because there was a specified identifiable private interest, i.e., SEDCO, (SEDCO Contract Appendix F) that was to be the beneficiary of the Petitioners' property. Further based upon the *Poletown case* since there was a specified identifiable private interest, the Court should determine under heightened scrutiny with the burden that the public purpose was primary with only incidental private benefit and that burden of showing same was on the City, not the Petitioners. Those motions were denied and thereafter the matter proceeded to Necessity Hearing with the court's opinion of July 6, 1990 entered. The Petitioners timely filed for Application for Leave to Appeal in Michigan Court of Appeals which was denied, Appendix B.

After the denial by the Michigan Court of Appeals, the Petitioners applied by Application for Leave to Appeal to the Michigan Supreme Court and under Appendix C the Michigan Supreme Court ordered the

Michigan Court of Appeals to grant Application for Leave.

After briefs and oral argument the Michigan Court of Appeals issued the Instant Opinion dated April 28, 1995, Appendix A, Petitioners applied to the Michigan Supreme Court for Application for Leave which was denied on January 29, 1996 and Petitioners Motion for Reconsideration was denied by the Michigan Supreme Court on April 29, 1996, attached as Appendix E.

REASONS FOR GRANTING THE WRIT

It was the belief of the Petitioners that since their property was being condemned by a public agency, i.e. the City of Port Huron, their property sold to an identifiable private interest, i.e. SEDCO, Appendix F; the Petitioners should be allowed a separate hearing on the issue of "Public Use" not necessity wherein the City of Port Huron would be obligated to show to the Court this proposed condemnation was for the primary benefit of the public and not the specified identifiable private interest. Further because a specified identifiable private interest was involved, under the *Poletown* standards as enunciated by the Michigan Supreme Court, the review at a public use hearing would be one of heightened scrutiny, to insure the public interest was the predominate interest being advanced and that this public interest and benefit was not speculative or marginal, but clear and significant.

The Petitioners understand that this Court has said in *Berman v. Parker,* 348 U.S. 26, 32 (1954) and *The State of*

Hawaii v. Midkiff, 467 U.S. 299 (1984) that when the legislature speaks the public interest or "Public Use" has been declared in terms, "well nigh conclusive", however, it was the belief of the Petitioners under *Poletown* and reaffirmed by the recent Supreme Court case of *Dolan v. City of Tigard*, 114 S. Ct. 2309 (1994), that in fact the "taking the clause of the Fifth Amendment is as much a part of the Bill of Rights as the First Amendment or Fourth Amendment and should not be relegated to the status of poor relation." 114 S. Ct. at 2309 (1994). As to the burden of proof regarding public use the *Nolan v. California Coastal Commission*, 483 U.S. 825 (1987) acknowledged that usually when a property owner challenges a governmental regulation that the party challenging has the burden of proof. In a taking situation, the burden properly rests on the City.

Thus the recent opinion of the Michigan Court of Appeals is at odds with stated taking jurisprudence, albeit by regulatory taking or actual condemnation taking. If a specified identifiable private interest is involved, a citizen petitioner should have the right and opportunity to a public use challenge. At this hearing the City or the condemning agency has the burden of proving that public interest will be predominately served and any benefit to the specified identifiable private interest will only be incidental. The burden of proving this public use and primary public benefit will be on the regulating or taking agency, i.e., in this case the City of Port Huron.

In this cause, Petitioners early and often requested appropriate constitutional safeguards to insure that in fact that this property was being taken, i.e., condemned for "public use" and not a private use. Petitioners were

never afforded the opportunity of such a hearing as evidenced by the Michigan Court of Appeals decision of April 28, 1995 and the Circuit Court Opinion of July 6, 1990. The Petitioners submit that if the "Taking Clause" of the Fifth Amendment of the United States Constitution is to have any substance a private property owner when faced with a taking or condemnation of their property and that property being delivered or sold to a specified identifiable private interest; a public use challenge can be made and should be addressed by the courts of this country. No where in *Berman supra* or *Hawaii supra* did this Court abdicate its Constitutional authority to review, albeit on a narrow basis, the action of the legislature. It follows that proper safeguards are not only afforded, but a right to property owners to insure that the condemning or regulatory authorities attempting to utilize these "public" interest statutes are using them in an appropriate, lawful, and constitutional manner. A local municipal authority may not properly utilize a "public property" statute by in fact favoring one private owner over another. That is why a public use hearing is required.

Again, the principles of this case only have applicability when there is identifiable private interest which will be the recipient of the private property of other persons based upon a so called, "public purpose" statute referred to in *Berman supra* or *Hawaii supra.*

While the legislature's public purpose statutes may be "well nigh conclusive" it is the carrying out of those statutes that this Court must focus its attention upon to insure that the private rights are not abrogated in the execution of public purpose, public use statutes, the court

must insure the public use is public use not significant private benefit with only incidental public benefit.

It is the belief of the Petitioners that this Honorable Court in *Nolan/Dolan* have shown that their property rights are in fact valuable under the Fifth Amendment of the United States Constitution. Where there is a taking involved the burden does shift to the condemning authority to utilize that authority. Where a constitutional right is involved (i.e. Fifth Amendment) there is a heightened level of scrutiny as opposed to a more differential standard which applies, and the taking authority must demonstrate significant and substantial public benefit and only incidental private benefit. In the instance of a benefit to a specified identifiable private interest the primary benefit remains public not private.

SUMMARY

It is respectfully submitted by the Petitioners that the safeguards stated by the Michigan Supreme Court in *Poletown* are the same as enunciated by this Honorable Court in *Nolan/Dolan*. When the taking clause of the Fifth Amendment of the United States Constitution is involved and a specified identifiable private interest is the recipient that burden of proving primary public use and benefit is on the taking authority and when a constitutional right such as as the Fifth Amendment is involved the Courts will look with heightened scrutiny to insure that it is the public that will be primarily benefited.

This public use hearing is separate and apart from a necessity hearing which by its very terms concedes the

issue of public use and only addresses whether or not the property is reasonably suited for the supposed public use in question.

CONCLUSION

WHEREFORE, James Michael Harris and Judith A. Harris, by and through their Attorneys, Thomas J. Ryan and Neil E. Wallace, respectfully request that this Honorable Court grant this Petition for A Writ of Certiorari to review the Judgment of the Court of Appeals of the State of Michigan, or, in the alternative, grant summary reversal of the decision of the Court of Appeals of the State of Michigan.

Respectfully submitted,

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Dated: July 24, 1996

APPENDIX A

STATE OF MICHIGAN

COURT OF APPEALS

CITY OF PORT HURON,
A Michigan municipal corporation,

Plaintiff-Appellee,

v

JAMES MICHAEL HARRIS, JUDITH A. HARRIS, JAMES DOCHERTY, and LOUISE DOCHERTY,

Defendants-Appellants,

and

LEO L. LAMAY, ERMA LAMAY, BERNARD LAJOIE, MARILYN LAJOIE, and MICHIGAN NATIONAL BANK,

Defendants.

UNPUBLISHED
April 28, 1995

No. 144366
LC Nos. 88-2519; 88-2520

Before: Holbrook, Jr., P.J., and Reilly and Garfield Hood,* JJ.

PER CURIAM.

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* Circuit Judge, sitting on the Court of Appeals by assignment.

Defendants appeal by leave granted from the July 24, 1990 order of the St. Clair Circuit Court affirming the determination by plaintiff's city council of public necessity for the condemnation of defendants' waterfront properties in the Water Street redevelopment area pursuant to the Rehabilitation of Blighted Areas Act (RBAA), MCL 125.71 *et seq.*; MSA 5.3501 *et seq.*

In August 1988, plaintiff's city council adopted a resolution declaring an area surrounding Water Street to be blighted and adopted a redevelopment plan that called for acquisition of all properties in the redevelopment area and the transfer of those properties to SEDCO, a private company that had submitted a plan to redevelop the area. Defendants, who were waterfront property owners, rejected plaintiff's purchase offers. Subsequently, plaintiff began condemnation proceedings.

On February 6, 1989, defendants sought review of plaintiff's resolution of necessity relative to the condemnation of their properties. Prior to the hearing, defendants moved unsuccessfully to shift the burden of proof as to public use to plaintiff and to establish that a "heightened scrutiny" standard was applicable because SEDCO was a private interest that would benefit from the condemnation. Plaintiff moved in limine to exclude admission of § 78 of plaintiff's city charter, which limited plaintiff's authority "to develop, lease, sell or otherwise dispose of any waterfront property" absent approval by a majority of electors voting in a special or general election. In response to plaintiff's motion, defendants requested summary disposition pursuant to MCR 2.116(C)(10). The trial court granted plaintiff's motion in limine, finding that the "sale of waterfront property is irrelevant . . . in

terms of the acquisition of the property." The court denied defendants' summary disposition motion.

At the necessity hearing, defendants presented no evidence that the redevelopment area was not blighted, but testified that they were willing to cooperate with the redevelopment plan. Plaintiff presented substantial evidence of blight in the redevelopment area and also presented expert testimony that sole ownership of the entire area was necessary to coordinate the comprehensive redevelopment plan.

Following the necessity hearing, the trial court held that "there was ample evidence presented to the City Council to substantiate a finding that blight was extant throughout the whole area as defined by the statute," and "that the subject parcels were necessary to particular for the development of the riverfront." The court thereafter entered an order affirming plaintiff's finding of necessity. Defendants sought leave to appeal that order in this Court, which was denied. Defendants then sought leave to appeal in the Michigan Supreme Court, which remanded the case to this Court for consideration as if by leave granted.

On appeal, defendants raise four issues, none of which we find to have merit.

I

Defendants first claim that the trial court erred by not applying a "heightened scrutiny" review standard as set forth in *Poletown Neighborhood Council v City of Detroit*, 410 Mich 616; 304 NW2d 455 (1981). Defendants claim

that under this standard, there is no evidence that the public will be primarily benefited, in a clear and significant way, that is not speculative or marginal. We disagree.

The review standard relied on by defendants was enunciated in *Poletown, supra,* pp. 634-635:

> The power of eminent domain is restricted to furthering public uses and purposes and is not to be exercised without substantial proof that the public is primarily to be benefited. Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with heightened scrutiny the claim that the public interest is the predominant interest being advanced. Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature.

The legislature has declared, in § 1 of the RBAA, that condemnation and rehabilitation of blighted areas, which are "detrimental or inimical to the health, safety, morals, and general welfare of the citizens, and to the economic welfare of the municipality," serves a necessary and essential public purpose and public use. MCL 125.71; MSA 5.3501. The fact that the condemned property will be conveyed to a private entity does not change the nature of the acquisition under the RBAA, since the controlling purpose of the Water Street redevelopment plan is to rehabilitate a blighted area, and any benefit which accrues to the private developer SEDCO, is merely incidental. *City of Center Line v Michigan Bell Telephone Co,* 387 Mich 260; 196 NW2d 144 (1972); *Sinas v City of Lansing,* 382 Mich 407; 170 NW2d 23 (1969); *In re Slum Clearance,*

331 Mich 714; 50 NW2d 340 (1951). Cf. *City of Lansing v Edward Rose Realty,* 442 Mich 626; 502 NW2d 638 (1993) (finding that the city's attempt to condemn the defendant's property pursuant to the Uniform Condemnation Procedures Act[1] and the home rule cities act[2] was invalid since neither statutue included a legislative determination that permitting mandatory access by city-franchised cable operators to all rental properties served a general public purpose); *Poletown, supra* (finding that the city's attempt to condemn a vibrant ethnic neighborhood, pursuant to the Economic Development Corporations Act,[3] and transfer the property to General Motors in an effort to alleviate unemployment served an overriding general public purpose).

Thus, we find that the heightened scrutiny standard in *Poletown* is inapplicable to these facts, and that judicial review is limited:

> The determination of what constitutes a public purpose is primarily a legislative function, subject to review by the courts when abused, and the determination of the legislative body of that matter should not be reversed except in instances where such determination is palpable and manifestly arbitrary and incorrect. [*Gregory Marina, Inc v City of Detroit,* 378 Mich 364, 396; 144 NW2d 503 (1966). Citations omitted.]

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[1] MCL 213.51 *et seq.*; MSA 8.265(1) *et seq.*

[2] MCL 117.1 *et seq.*; MSA 5.2071 *et seq.*

[3] MCL 125.1601 *et seq.*; MSA 5.3520(1) *et seq.*

Contrary to defendants' claim, SEDCO was not the "engine" for redevelopment. In fact, plaintiff began acquiring properties from willing sellers in the area in the late 1970s and early 1980s, entertaining various redevelopment proposals of private entities before entering into an agreement with SEDCO in 1987. The public benefit predominated any incidental benefit to a private interest and, therefore, we find that the Water Street redevelopment plan was within the legitimate purposes of the RBAA.

II

Defendants next claim that plaintiff failed to comply with various procedural requirements of the RBAA and the Uniform Condemnation Procedure Act (UCPA), MCL 213.51 *et seq.;* MSA 8.265(1) *et seq.*, and as a result, the city was without authority to condemn defendants' properties. Specifically, defendants assert that plaintiff "gerrymandered the development area boundaries to dilute the voice of the residents in the area." We disagree with this contention, and affirm the trial court's finding that plaintiff complied with the procedural requirements of the RBAA to the maximum extent possible.

Condemnation statutes must be strictly observed to prevent any abuse of power by the condemning authority. *Lookholder v State Hwy Comm'r,* 354 Mich 28, 37; 91 NW2d 834 (1958); *In re Central Industrial Park Project,* 177 Mich App 11, 16; 441 NW2d 27 (1989).

In addressing defendants' various claims, the trial court stated that it was "satisfied that the City exerted considerable effort, more than enough to satisfy the

demands of the statute, in surveying and searching out individuals with qualifications to serve as members of the CDC." After a thorough review of the record, including the extensive testimony of Raymond Straffon, city planning director, and Douglas Alexander, administrative assistant to plaintiff's city manager, we find that the record amply supports the findings of the trial court that the 13 members of the CDC were selected in a manner to ensure that the CDC, "to the maximum extent possible," would be representative of the redevelopment area's residents and other interested persons. See MCL 125.74(5)(a); MSA 5.3504(5)(a). Cf. *Goachee v City of Garden City*, 45 Mich App 716; 206 NW2d 801 (1973) (selection process was a complete sham); *City of Detroit v Vavro*, 177 Mich App 682, 686-687; 442 NW2d 730 (1989). We find no merit to defendants' other claims of procedural irregularity.

III

Defendants next claim that the trial court erred in upholding plaintiff's determination of necessity to acquire defendants' properties. We disagree.

A municipality's resolution of necessity is prima facie evidence of necessity and fulfills its initial burden of proof. *City of Troy v Barnard*, 183 Mich App 565, 569; 455 NW2d 378 (1990). A party seeking review of a finding of necessity has the burden of coming forward with evidence to support a finding that the legislative body abused its discretion. *Id.* The judiciary will not overturn a determination of necessity absent a showing of fraud, error of law, or abuse of discretion. *Id.; Nelson Drainage Dist v Filippis*, 174 Mich App 400, 403; 436 NW2d 682

(1989). Here, defendants did not present any evidence to contradict the testimony of plaintiff's expert that sole ownership of the entire redevelopment area was necessary to ensure coordination of the comprehensive rehabilitation plan. Thus, we find that defendants failed to satisfy their burden of coming forward with evidence to support their claim.

IV

Finally, defendants claim that the trial court erred in denying their motion for summary disposition because § 78 of plaintiff's city charter precluded the city from developing, selling, or disposing of waterfront property without the approval of a majority of the electors voting on the question at a general or special election. This claim is without merit.

The powers granted to a condemning authority by the RBAA are in addition to and in supervention of any contrary provision or limitation imposed in other statutes or local charters. MCL 125.82 and .83; MSA 5.3512 and .3513. See also *Sinas v City of Lansing*, 7 Mich App 464; 151 NW2d 858 (1967), aff'd 382 Mich 407; 170 NW2d 23 (1969). Having determined that plaintiff has complied with the RBAA provisions, § 78 of plaintiff's city charter does not invalidate plaintiff's condemnation action. Accordingly, the trial court did not abuse its discretion in granting plaintiff's motion in limine.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Maureen Pulte Reilly
/s/ Garfield W. Hood

APPENDIX B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

CITY OF PORT HURON, A Michigan Municipal Corporation,	)	
Plaintiff,	)	**File No. 88-002519** **No. 88-002520**
vs.	)	
JAMES MICHAEL HARRIS, JUDITH A. HARRIS, LEO L. LA MAY and ERMA LA MAY, BERNARD LAJOIE and MARILYN LAJOIE; JAMES DOCHERTY and LOUISE DOCHERTY, husband and wife, and MICHIGAN NATIONAL BANK,	)	
Defendants.	)	

OPINION AND DECISION

The Plaintiff City of Port Huron seeks to condemn the properties of Defendants Harris and Docherty pursuant to the Rehabilitation of Blighted Areas Act (hereinafter, RBA), MCL 125.71, *et seq;* MSA 5.3501, *et seq.*, and the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq;* MSA 8.265 (1), *et seq.*

It should be noted that, while this observation has no relevance to or bearing upon the adjudication of the issue of necessity presently before the Court, these proceedings

have a "history" in that the City previously sought to condemn these same properties in 1987 in actions that were thereafter found to be procedurally defective by this Court. Land use studies and master plans show the area in question as part of a major rehabilitative effort affecting Black River properties over many years, with the City commencing to acquire parcels in the subject matter area, designated as the Water Street Redevelopment area, in the early 1970's. The City's involvement in the whole Black River area, with improvement and development occurring over a period of years, explains in large measure the changing character of certain areas and the effect of the implementation of a plan upon specific properties which in and of themselves may not have been a contributing factor to the need for rehabilitation under a general enabling statute in the first place. The final phases of redevelopment can prove difficult to the municipality, particularly as here, where vital structures remained but the population had moved on. This state of affairs, of course, does not relieve the City from pursuing its goals in conformity with the statutes applicable, nor does it deprive property owners of their constitutional and statutory rights.

At the outset it is clear that the function of the Court is limited to reviewing the determination by the City's legislative body that the development plan requires the taking of Defendants' properties. The City's Resolution of Necessity will not be overturned by the Court in the absence of error of law, fraud, or abuse of discretion. In this regard, the Court must examine the stated purpose of the City to eradicate blight and rehabilitate a blighted

area, and also must find that the subject parcels of property are reasonably suitable and necessary for the contemplated project. In this context necessity means "convenient and useful", in an overall sense, not that the proposed project can be completed without the inclusion of Defendants' specific parcels.

Whether or not an area can be considered blighted, as the City here contends, requires a careful examination of the RBA. The Court finds significant the 1986 amendments to the RBA which dramatically expanded the definition of "Blighted Areas" to include ". . . business or residential uses, marked by a demonstrated pattern of deterioration in physical, economic, or social conditions, and characterized by such conditions as functional or economic obsolescence of buildings or the area as a whole . . . improper or inefficient division or arrangement of lots and ownerships . . . inappropriate mixed character and uses of the structures . . . *which may include any buildings or improvements not in themselves obsolescent . . .*, the acquisition of which is *considered* necessary for rehabilitation of the *area.*" (Emphasis added).

As related by the City Planning Director and the documentary evidence introduced (Plaintiff's Exhibits 1, 2, 3) there was ample evidence presented to the City Council to substantiate a finding that blight was extant throughout the whole area as defined by the statute, which further provides that the "conditions that constitute blight are to be broadly construed." Sec. 2 (a). A review of the record presented to the City's legislative body by the City's expert, Robert Swartz, further demonstrates and confirms that the finding of blight was fully

supported. Additionally, and very importantly, Defendants presented no evidence that the area was *not* blighted, a deficiency that weighs heavily, considering the presumptive standing of the City's Resolution of Necessity.

With respect to the issue of whether the subject parcels are reasonably suitable and necessary to further the purposes of the RBA, Defendants only presented the testimony of their expert, Architect Rodney Nofs, that Defendants' properties and their proposed improvement and renovation would be *compatible* with the proposed project. Defendants burden here is to establish that their parcels were not reasonably suitable and necessary for the contemplated project. The City's expert, Gerald Crane, opined that the proposed project would be "prejudiced" if the subject parcels were eliminated from the taking, indicating that the plan proposed for the area was comprehensive and that the subject parcels were necessary in particular for the development of the riverfront. Again, this aspect of the necessity equation was supported by evidence favoring the Plaintiff City.

Defendants argue with some force that the City has not adhered strictly to the procedural commands of both the RBA and the UCPA prior to the adoption of the Resolution of Necessity, which now requires this Court to find in their favor on the necessity issue.

While there is little room for deviation under the UCPA, where strict interpretation of its requirements is recognized, the motivating force for the condemnation of private property in this case is the RBA. It is settled that the broad, rehabilitative and economic motivated statutes

are to be liberally construed, and that any deficiencies in their application must be viewed in an atmosphere of procedural safeguards – "broadly construed", to cite the statute – and certainly not jurisdictional. It is one thing to totally emasculate the composition and function of the citizens' district council, as in *Goache v. City of Garden City*, 45 Mich App 716, and quite another to make a good faith effort, as carefully recited by Douglas Alexander, to comply with statutory requirements. Considering the "history" alluded to above, the Court is especially mindful that procedural due process is Defendants' absolute entitlement.

Toward that end, the Court has carefully examined Defendants' claims regarding the CDC, its organization, its composition, and its function. The Court is satisfied that the City exerted considerable effort, more than enough to satisfy the demands of the statute, in surveying and searching out individuals with qualifications to serve as members of the CDC. It is clear from the evidence that only about forty residents were in the area, many of them transients and not listed on tax rolls or in directories. It took persistence to obtain the services of five residents. Thereafter, Mr. Alexander sought out persons who owned property in the district but lived elsewhere, and was able to obtain two more, or a total of seven, all of whom the Court finds were qualified to serve (Meyers was still an owner). The other members, the Court finds, had a demonstrable and substantial interest in the area, including residents of Cross Point, a vital segment of the whole Black River-Water street redevelopment. Also, the Court dismisses as inconsequential Defendants' claim that the appointment method

was invalid, finding that *in fact* the appointment was made by the executive, not the legislative body.

In this regard it is noteworthy that the very two property owners who now object to these proceedings, failed to take the opportunity to either influence the decision of the CDC or to at least make a record for review by the City Council and ultimately this Court.

To the extent possible, Plaintiff complied with the requirements of the RBA with respect to composition of the CDC which proceeded to discharge its statutory function. In this determination the Court is guided by the precepts set forth in *Acquisition of Land for the Jefferson/ Conner Industrial Revitalization Project,* now cited as *Detroit v. Vavro,* 177 Mich App 682.

Defendants further claim that the City bears the burden of proving "public use", as distinguished from "public necessity," citing *Poletown Neighborhood Council v. City of Detroit,* 410 Mich 616. This proposition is clearly erroneous. There is a considerable difference in the purposes of an act to foster the economy and an act to eradicate blight. In the latter the focus is the eradication of a problem (the necessity) and not the use to which the area will be devoted or the means to accomplish the proposed use. This issue is, in any event, put to rest by the *Theatre District* case, now cited as *Detroit v. Lucas,* 180 Mich App 47, as well as *Poletown,* supra.

Arguments presented by the Defendants that the City failed to relocate them pursuant to the statute are without merit in that the City was not obligated to relocate Defendants to a water front property, as contended. Nor did the City fail to establish a documentary record to support its

preliminary findings as a predicate to the adoption of the necessity resolution. The record provided by both Mr. Straffon and Mr. Alexander was a sufficient basis upon which the City Council could, as it did, take action.

A careful review of the record and the able briefs of counsel in support of their respective positions convinces this Court that certainly there is no evidence whatsoever of any fraud affecting these proceedings from their inception, that the City proceeded in a lawful manner and that no errors occurred compelling a reversal of the finding of necessity, and finally that where discretion in the proceedings was indicated there was no abuse.

Having found that the Plaintiff City has complied with the requirements of the RBA and the UCPA, and that Defendants have failed to rebut the presumption of necessity for the taking of their respective properties, an Order consistent with this Opinion and Decision may enter in accordance with the rules.

/s/ James T. Corden
CIRCUIT JUDGE
TRUE COPY
Marion Sargent
County Clerk

Dated: July 6, 1990
Port Huron, MI 48060

APPENDIX C

Court of Appeals, State of Michigan

ORDER

City of Port Huron v.
James Michael Harris

Docket # 131834

L.C. # 88-2519 & 88-2520

Donald E. Holbrook, Jr.
Presiding Judge
Gary R. McDonald
Janet T. Neff
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

/s/ Donald E. Holbrook, Jr.

[SEAL]

A true copy entered and certified by Norbert G. Jaworski, Chief Clerk, on

DEC 13 1990	/s/ Robert G. Jaworski
Date	Chief Clerk

APPENDIX D

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

ORDER
Entered: August 30, 1991

90687

CITY OF PORT HURON,

Plaintiff-Appellee,

v

JAMES MICHAEL HARRIS, JUDITH A. HARRIS, JAMES DOCHERTY and LOUISE DOCHERTY,

Defendants-Appellants,

and

LEO L. LA MAY, ERMA LA MAY, BERNARD LAJOIE, MARILYN LAJOIE, and MICHIGAN NATIONAL BANK,

Defendants-Appellees.

SC: 90687
COA: 131834
LC: 88-002519
88-002520

On order of the Court, the application for leave to appeal is considered and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we REMAND the case to

the Court of Appeals for consideration as on leave granted.

80827

[SEAL]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

August 30, 1991 /s/ Corbin R. Davis
Clerk

APPENDIX E

Michigan Supreme Court
Lansing, Michigan

James H. Brickley
Chief Justice

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

ORDER
Entered: April 29, 1996

103041(40)

CITY OF PORT HURON,
a Michigan corporation,

Plaintiff-Appellee,

v

JAMES MICHAEL HARRIS, JUDITH A. HARRIS, JAMES DOCHERTY and LOUISE DOCHERTY,

Defendants-Appellants,

and

LEO L. LaMAY and ERMA LaMAY, BERNARD LAJOIE and MARILYN LAJOIE, and Michigan National Bank,

Defendants.

SC: 103041
COA: 144366
LC: 88-002519
88-002520

On order of the Court, the motion for reconsideration of this Court's order of January 29, 1996 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

80423

[SEAL]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

April 29, 1996 /s/ Corbin R. Davis
Clerk

APPENDIX F

AGREEMENT

AGREEMENT entered into April 28, 1989, between the CITY OF PORT HURON, a Michigan municipal corporation, 100 McMorran Boulevard, Port Huron, Michigan 48060 (hereinafter called "City"), acting as a municipality pursuant to the Blighted Area Rehabilitation Act, 1945 Public Act No. 344, as amended, and SOUTHEASTERN DEVELOPMENT COMPANY, a Michigan corporation, 405 Water Street, Port Huron, Michigan 48060 (hereinafter called "Redeveloper").

WITNESSETH THAT:

WHEREAS, the City and the Redeveloper's predecessor-in-interest, Southeastern Exploration Company, previously entered into a written agreement on March 11, 1987; and

WHEREAS, the City and Redeveloper desire and intend that this agreement be in substitution of the March 11, 1987 agreement; and

WHEREAS, in furtherance of the objectives of the Blighted Area Rehabilitation Act, the City has undertaken a program for the clearance and reconstruction or rehabilitation of slum and blighted areas in the city, and in this connection in engaged in carrying out a project known as the Water Street Redevelopment Project in an area located in the city more particularly described in Exhibit "A"; and

WHEREAS, as of the date of this agreement there has been prepared and approved by the City a Development Plan for the rehabilitation of all of the blighted area which lies within the boundaries of the Water Street

Redevelopment Project District Area, said Development Plan having been established pursuant to the Blighted Area Rehabilitation Act; and

WHEREAS, the Citizens' District Council established under the terms of the Blighted Area Rehabilitation Act, after notice and hearing, has approved in writing the Development Plan; and

WHEREAS, the local legislative body of the City, after duly complying with the Blighted Area Rehabilitation Act, has passed resolutions:

A. adopting a feasible and reasonable relocation plan for displaced individuals and families;

B. determining the area within the boundaries of the Water Street Redevelopment Area is a blighted area within the meaning of 1945 Public Act No. 344, as amended; and

C. adopting the Water Street Redevelopment Plan as approved by the Citizens' District Council; and

WHEREAS, in order to enable the City to achieve the objectives of the rehabilitation of blighted areas in the Water Street Redevelopment Project District Area and to make the land in the project area available for redevelopment for the protection of the health, safety, morals and general welfare of the citizens of the City of Port Huron, the City and the Redeveloper are entering into this agreement; and

WHEREAS, City has previously conveyed to Redeveloper various parcels of real property situated in the Water Street Redevelopment Project District Area, more particularly described in the warranty deeds from

the City to the Redeveloper which are recorded at Liber 1196, Pages 194-95 and Liber 1207, Pages 897-98; the legal descriptions of the properties conveyed in the aforementioned deeds are attached hereto and made a part of this agreement as Exhibits "B" and "C"; and

WHEREAS, City currently owns and/or is in the process of attempting to acquire title to the remainder of those properties lying within the boundaries of the Water street Redevelopment Project District Area that are not currently titled in the name of the City or the redeveloper; and

WHEREAS, the parties hereto acknowledge that the City is using its best efforts to acquire the remainder of parcels located in the Water Street Redevelopment Project District Area pursuant to its power of eminent domain and that this agreement is subject to the City's ability to secure title to properties which are subject to its power of eminent domain; and

WHEREAS, the parties hereto acknowledge that the City's ability to transfer title to said properties is subject to compliance with Federal, State and local laws; and

WHEREAS, the City has offered to sell and Redeveloper is willing to purchase certain real property located in the Water Street Redevelopment Project District Area more particularly described in the attached Exhibit "A"; and

WHEREAS, the City believes that the redevelopment of the property pursuant to this agreement, and the fulfillment generally of the agreement, is in the vital and best interests of the City and the health, safety, morals,

and general welfare of its citizens and in accord with the public purposes and provisions of the applicable, Federal, State and local laws and requirements under which the project has been undertaken:

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, EACH OF THEM DOES HEREBY COVENANT AND AGREE WITH THE OTHER AS FOLLOWS:

1. This agreement is in substitution of an agreement heretofor entered into between the parties hereto or their predecessors-in-interest on March 11, 1987 which prior agreement is hereby revoked.

2. Subject to all terms, covenants and conditions of this agreement, City shall sell and Redeveloper shall purchase the property situated within the Water Street Redevelopment Project District Area as needed by Redeveloper to meet market demands for redevelopment.

3. As needed by Redeveloper, City shall convey marketable title to Redeveloper by warranty deed.

4. Redeveloper shall construct upon the property conveyed, structures containing condominium units and boat wells, and shall devote its best efforts toward their resale to the public. Construction shall be commenced within sixty (60) days from the date of conveyance.

5. Subject to all terms, covenants and conditions of this agreement, City agrees to sell and redeveloper agrees to purchase the property and pay the City therefore a total consideration of One Million, Eight Hundred Thousand ($1,800,000.00) Dollars, said consideration to be paid according to the following terms and adjustments:

A. As each condominium dwelling unit and/or boat well is sold, Redeveloper shall pay to City as consideration a minimum of $4,000.00 per dwelling unit or boat well. Upward adjustments of the $4,000.00 per dwelling unit or boat well minimum shall be negotiated between Redeveloper and the City Manager in order to realize the $1,800,000.00 total consideration.

B. That for each parcel of real property situated within the Water Street Redevelopment Project District Area that Redeveloper purchases directly from an owner other than the City, Redeveloper shall receive a credit in the amount of the purchase price against Redeveloper's obligation to pay the City the total consideration of $1,800,000.00.

C. That Redeveloper shall receive a credit against its obligation to pay the City the total consideration of $1,800,000.00 for expenses incurred by the Redeveloper for the demolition and removal to grade of all existing buildings, structures, and non-natural obstructions on the property provided that it first notifies and obtains the consent of the City Manager.

6. Redeveloper shall satisfy itself that the Water Street Redevelopment Project Area is properly zoned for the proposed project.

7. The premises conveyed to Redeveloper, condominium units and boat wells shall be placed on the tax rolls only as provided under the provisions of the General Property Tax Law of the State of Michigan (1893 Public Act No. 206, as amended), and the Condominium Act (1978 Public Act No. 59, as amended).

8. City shall pay the cost of a perimeter survey and provide master owner's title insurance policy thereon in the amount of compensation to be paid to City by Redeveloper. Redeveloper at its own expense shall prepare, file and record all necessary condominium documents.

9. Prior to the issuance of building permits for any and all phases of redevelopment, Redeveloper shall submit to City for its specific approval, the following:

building specifications;
building site and location plans;
building elevations;
building energy standards; and
building exterior design.

10. The Redeveloper shall not, prior to the completion of the improvements contemplated by this agreement, make any sale, assignment, conveyance, or lease or transfer in any other form with respect to this agreement or the property situated within the redevelopment area, without the prior written approval of the City.

11. This agreement shall be binding upon and inure to the benefit of the successors, assigns and personal representatives of the parties.

12. This agreement is executed in two (2) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City has caused this agreement to be duly executed in its name and behalf by its City Manager, and the Redeveloper has caused this agreement to be duly executed in its name and behalf by its President on the 5th day of May, 1989.

BY THE CITY OF PORT HURON
(As provided in Chapter X,
Section 87 of the 1969
City Charter)

APPROVED AS TO SUBSTANCE:

/s/ G. R. Bouchard
G. R. Bouchard,
City Manager

/s/ Mary J. Brooks
Mary J. Brooks, Mayor

APPROVED AS TO FORM:

/s/ Anthony M. Bonadio
Anthony M. Bonadio,
City Attorney

/s/ Pauline M. Adler
Pauline M. Adler,
City Clerk

APPROVED AS TO SUFFICIENCY OF FUNDS:

/s/ Bruce A. Seymore
Bruce A. Seymore,
Director of Finance

ATTEST:

/s/ Douglas R. Alexander
(please print/type name)
Douglas R. Alexander

BY SOUTHEASTERN DEVELOPMENT COMPANY,
a Michigan corporation

ATTEST:

/s/ Allan E. Peattie
Allan E. Peattie,
President

/s/ Illegible
Illegible
(please print/type name)

attachments: Exhibit "A"
Exhibit "B"
Exhibit "C"

EXHIBIT "A"

WATER STREET REDEVELOPMENT PROJECT DISTRICT AREA BOUNDARY

Land located in the City of Port Huron, County of St. Clair, State of Michigan. Beginning at the intersection of the centerline of Lapeer Avenue and the east right-of-way line of Seventh Street if extended Southerly; thence Northeasterly along said right-of-way line to its intersection with the centerline of the Black River; thence Northwesterly along the centerline of Black River to its intersection with the centerline of Tenth Street; thence Southerly along the centerline of Tenth Street to its intersection with the centerline of Water Street; thence Southeasterly along the centerline of Water Street to its intersection with the South line of Lot 1, Assessor's Water Street Plat if extended Easterly; thence Westerly along the south line of said Lot 1 to its intersection with the West line of Lot 19 of Skinner's Subdivision of Lot 5, Blk. 106, White Plat; thence Southwesterly along the west line of said Lot 19 extended to its intersection with the centerline of Crescent Place; thence Southeasterly along the centerline of Crescent Place to its intersection with a line, as extended, beginning on the South line of Crescent Place and 5 ft. East of the Northwesterly corner of Lot 6 and running Southwesterly to a point on the Southerly line of Lot 6, 20 ft. east of the Southwest corner of Lot 6, Skinner's Subdivision of Lot 5, Blk. 106, White Plat; thence Southerly along said line to its intersection with the northerly line of the Lapeer Court Plat; thence Westerly along the Northerly line of Lapeer Court Plat to the Easterly line of the Ernst Court Plat; thence Southerly

along the Easterly line of Ernst Court Plat to its intersection with the Northerly line of Lots 1 and 2, Blk. 1, Lapeer Court Plat, as extended; thence Easterly along the Northerly line of said Lots 1 and 2 to the West line of Lot 3, Blk. 1, Lapeer Court Plat; thence Southerly along the West line of said Lot 3, as extended, to the centerline of Lapeer Avenue; thence Easterly along said centerline to the Point of Beginning.

EXHIBIT B

A parcel of land in the City of Port Huron, St. Clair County, Michigan, described as:

Part of Lot 1, Lots 2 through 9 inclusive; Lot 10 Except the East 10′ thereof; Lots 11 through 18 inclusive; and the Southerly 150′ of Lot 19, all in Block 95, Whites Plat (Liber B, Page 15); also Lots 1 through 12 inclusive, Lot 19, Lot 21 through 29 inclusive; parts of Lots 13, 16, 20, 17 and 18, Assessor's Subdivision of a part of Blocks 100 & 106 White's Plat, Liber 48 Page 4; also Lot 5 and part of Lot 4 Block 3; and Lot 5, and part of Lot 4, Block 4, Lapeer Court Plat as amended (Liber 12, Page 118); also part of Lot 1, Subdivision of Lot 5, Block 106 of White's Plat (Liber A, Page 6); together with a portion of vacated Water Street right of way and a portion of the vacated Lapeer Court right of way, this entire parcel, more particularly described as and encompassed by the following description; beginning at a point on the North line of Lapeer Avenue (100′ wide) distant North 80 degrees 13

minutes West 20.38 feet from the Southwest corner of Lot 13, said Assessors Subdivision of a part of Blocks 100 & 106, Whites Plat (Liber 12, Page 118); thence South 80 degrees 13 minutes East 762.73 feet (along said North line of Lapeer) to its intersection with the Southerly line of Water Street; thence extending South 80 degrees 13 miles East 54.94 feet; thence north 54 degrees 47 minutes 00 seconds East 44.28 feet to a point on the Northerly line of the Seventh Street right of way; thence along said right of way the following courses and distances North 36 degrees 34 minutes 38 seconds East 22.69 feet; and North 20 degrees 30 minutes 14 seconds East 59.99 feet to the Westerly dock line of Black River as established in 1893 by the Department of War; thence along said dock line the following courses and distances; North 58 degrees 1459 minutes 22 seconds West 118.59 feet; North 53 degrees 44 minutes 46 seconds West 200.00 feet and North 38 degrees 27 minutes 39 seconds West 129.72 feet to its point of intersection of the Easterly line of Lot 10, Block 95 White Plat (Liber 8, Page 15) extended; thence South 36 degrees 01 minutes 38 seconds West 114.69 feet along said Easterly lot line to the Southeast corner of said Lot 10; thence North 53 degrees 58 minutes 22 seconds West 10.00 feet along the North right of way line of Water Street; thence North 36 degrees 01 minutes 38 seconds East 117.47 feet to the aforesaid 1893 dock line; thence along said dock line the following courses and distances; North 38 degrees 27 minutes 39 seconds West 316.87 feet and north 34 degrees 29 minutes 54 seconds West 252.21 feet along said dock line to a point which intersects a line 150 feet North of at right angles to and parallel with the South line of Lot 19, Block 95, Whites Plat (Liber 8, Page

15); thence South 47 degrees 55 minutes 01 seconds West 172.78 feet along said line to the Easterly line of the Water Street right of way (66' wide); thence extending South 47 degrees 55 minutes 01 seconds West 66 feet to the Westerly line of Water Street right of way (66' wide); thence continuing South 47 degrees 55 minutes 01 seconds West 93.04 feet to a point on the proposed Easterly line of relocated Water Street, said point being on a curve to the Southeast, said curve having a radius of 700.0 feet, a central angle of 37 degrees 01 minutes 13 seconds and a long chord bearing South 8 degrees 43 minutes 37 seconds East 444.46 feet; thence along the arc of said curve (Easterly line of relocated Water Street) 452.29 feet to its point of ending; thence continuing along Easterly line of relocated Water Street South 9 degrees 47 minutes west 45.0 feet to the point of beginning of this description. Contains 8.477 acres.

EXHIBIT "C"

A parcel of land in the City of Port Huron, St. Clair County, Michigan, described as:

Part of Lot 8, Lots 9 through 14 inclusive, part of Lots 15 and 16, Lots 17 through 25 inclusive, parts of Lots 26 and 27, Assessor's Subdivision of a part of blocks 100 and 106, White's Plat (Liber 48, page 4); also Lots 4 and 5 and part of Lots 2 and 3, Block 3, and Lot 5 and part of Lot 4, Block 4, Lapeer Court Plat as amended, (Liber 12, page 118); also part of Lots 1 and 3 subdivision of Lot 5, Block 106 of

White's Plat, (Liber A, page 6); together with a portion of the vacated Lapeer Court right of way, this entire parcel, more particularly described as and encompassed by the following description; beginning at a point on the North line of Lapeer Avenue (100 feet wide) distant South 80° 13′ East 5.0 feet from the Southwest corner of Lot 15, said "Assessor's Subdivision of a part of Blocks 100 and 106, "White's Plat" (Liber 48, page 4); thence South 80° 13′ East 375.62 feet (along said North line of Lapeer); thence North 9° 47′ East 52.68 feet; thence North 24° 47′ East 99.74 feet; thence North 30° 47′ East 75.05 feet to a point on the Westerly line of the Water Street right of way; thence North 42° 4′59″ West 519.16 feet along said westerly right of way line; thence South 47° 55′1″ West 135.0 feet; thence South 42° 4′59″ East 80.58 feet; thence South 9° 47′ West 383.71 feet to the point of beginning of this description. Contains 3.7197 acres more or less and is subject to any and all easements and restrictions of record.